

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Comprehensive Review of Universal)	WC Docket No. 05-195
Service Fund)	
Management, Administration, and)	
Oversight)	CC Docket No. 96-45
)	
Federal-State Joint Board on)	
Universal Service)	CC Docket No. 02-6
)	
Schools and Libraries Universal Service)	
Support Mechanism)	WC Docket No. 02-60
)	
Rural Health Care Support Mechanism)	WC Docket No. 03-109
)	
Lifeline and Link-Up)	CC Docket No. 97-21
)	
Changes to the Board of Directors for the		
National Exchange Carrier Association,		
Inc.		

**NOTICE OF PROPOSED RULEMAKING
AND
FURTHER NOTICE OF PROPOSED RULEMAKING**

Comments by the New York City Department of Education (NYCDOE)

The following comments are submitted in response to the Commission's Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking released June 14, 2005.

The New York City Department of Education (NYCDOE) provides free primary and secondary education to approximately 1.1 millions students and operates more than 1,200 facilities. The NYCDOE envisions technology as an integral part of learning environment. Participation in the E-Rate Program, with all its complexities and uncertainties, continues to be an essential benefit as well as a major challenge for this institution.

The Universal Service Fund/E-Rate Program has revolutionized the school environment and had a dramatic impact on New York City's ability to bring the Internet to students in their classrooms. Once a novelty, the accessibility of the Internet is now viewed as an essential element to the curriculum. Increasingly, students and teachers in every school are using the educational resources of the Internet in their daily lessons and independent research. The Internet can be accessed from multiple locations via wireless laptops and wired desktops in classrooms or libraries within a school building.

With all the success of the E-Rate program, we agree with the FCC that measures should be taken to refine the E-Rate program to make it more effective, fair and efficient. We offer the following comments in spirit of improving the implementation of the E-Rate Program for ourselves and all other applicants.

COMMENTS

A. 1 (b) USF Administrative Structure

Any replacement of the current administration would neither benefit nor enhance the efficiency needed to continue the necessary growth of the E-rate program. Over the years, USAC has acquired a level of expertise in telecommunication issues in the K-12 environment that will be difficult to transfer to another entity. At this point,

the program would be better served if some changes are made to USAC's ability to properly administer such a large program.

The Federal Communication Commission (FCC) should clearly outline USAC's authority and increase their ability to implement necessary administrative procedures so as to effectively execute the E-rate rules. USAC is in a mature state where they should have wider latitude in making program related decisions and rulings on appeals. In addition, for USAC to effectively administer the program, FCC should provide better clarification of the existing rules and guidelines. The FCC rulemaking process for the E-rate program since its inception has been vague and usually lacks specificity. This burdens the administration of the program by requiring USAC to interpret and implement vaguely worded rules. It creates an environment where officials are often reluctant to provide written interpretation of the rules or procedures when an applicant requests guidance in order to comply with such rules. In our experience, since inception of the program, whenever we request any clarification or guidance on specificities of the rules, the response has been informal in the form of verbal comments through telephone conversations or at meetings.

We also believe that the USAC Board should include greater participation by applicant members who can better assess the impact of potential regulations and decisions that affect those applying for and making use of E-rate funding. In particular we believe that one board member should come from a large city school system with a solid understanding of the budget, regulations, timeframe, and other complexities pertaining to the operations of large urban education systems. In the past, assumptions of what is workable in a school district or single school appear to have been based on individual schools or small education systems. Those assumptions do not always reflect the realities of an educational structure such as those that exist in large schools districts such as Los Angeles, Chicago, and New York. Our experience dealing with the E-rate program is very different than our experiences in dealing with other government programs where differentiations in size and other uniqueness are taken into consideration. In addition, the E-rate

program's timeframe for completing major infrastructure build-out is unrealistic and inconsistent with timeframes of other government program. Such timeline requirements as those in the E-rate program may well work for a small school district or individual schools but it is a major challenge for a large school district.

A. 3. Program Management

While we favor greater flexibility in the use of E-rate discounts for eligible services and equipment, we strongly oppose the establishment or use of any formula to distribute E-rate funds directly to schools. The use of a formula-based approach would create additional program implementation challenges for school districts and would make the detecting of waste, fraud, and abuse more difficult. A formula-based approach will significantly hinder a school district's ability to plan strategically for the equitable benefit of all schools. It will also negatively impact the effort to standardize the schools' telecommunication services and infrastructure for a more efficient network. Without such standards, the ability to support and provide the services to maintain the viability of any telecommunication infrastructure would be at risk, especially for a large school district such as NYCDOE.

The formula-based approach would create disadvantages for many schools and would actually add administrative burden in terms of monitoring program compliance. For example, NYCDOE, being a large dependent urban school district, has been able to leverage additional resources centrally, with the goal of ensuring parity across all its schools. This is made possible because NYCDOE implements the E-rate program as a district-wide program and the burden of all administrative activities pertaining to the application process and the ability to provide the local share are not born by the individual schools. Should the E-rate program become a formula-based program, the local share for equipment and services would likely be funded from the schools' limited allocated resources. Even with the generous discounts of the program, there are substantial ineligible costs implicit in the use of

any E-rate discounts in terms of Internet ready computers, electrical power upgrades, asbestos abatement, teacher training, maintenance and support. The individual school's ability to take advantage of E-rate discounts would decrease because of its limitations on raising adequate funding.

It should also be noted that the E-rate program is essentially a "public procurement program" as its primary requirements rely heavily on the understanding, experience, and skills in subject matters not necessarily in existence in a school setting. Staff experience in public contract requirements, telecommunication technologies, budgeting and financing, are not usually part of an individual school community. Hence, due to a lack of such knowledge and understandings at the local school level, many may actually move to a reliance on vendors for guidance that may then increase the possibility of waste, fraud, and abuse.

We therefore oppose any formula based program and strongly recommend a continuation of the present system with modifications to improve the existing process to allow for flexible use of the discounts within established eligible guidelines.

A. 3 (a) Application Process

The entire application process from the filing of the Form 470 to Form 471 and through the PIA review is very tedious and mostly bureaucratic in its structure and requirements. We believe that the application and review process can be simplified and still retain the ability to ensure that funds are disbursed and used appropriately.

For all Priority 1 services, we support the consideration for a different and simpler application process and timeframe, separate from the Priority 2 services. Priority 1 services are generally recurring services from a selected provider that cannot be changed easily and certainly, for a large district, not from year to year. The cutover

of services from one provider to another provider, either in the telecommunication or Internet access services is time consuming, disruptive, and often costly. Allowing the Priority 1 services to be filed, reviewed, and approved on a multi-year basis is practical and eliminates the burden of filing for the same recurring service each year.

A multi-year approval of Priority 1 services would have a capped discount and funding commitment level for that specific period of time. However, the process should allow for growth in usage based on an increased number of school facilities, student enrollments, or other pre-determined applicable criteria that justify growth of services. A full application and review process could be required of applicants under certain circumstances such as changes in service provider(s) within an approved multi-year period.

For Priority 2 services, considerations need to be given to the nature of the work that the funding provides and the timeline of the application process. For instance, the current process can take up to twelve months from the initial Form 470 to the FCDL for a Priority 2 request. During this extended time frame, technologies may change and equipment may reach the manufacturer's end-of-life cycle. This essentially means that an applicant would need to file a service/equipment substitution before they can actually execute the project. In cases where FCDLs are really late, it impacts the applicants' ability to properly plan and file for the following year. An applicant's uncertainty of approval for equipment can actually contribute to duplicate filings as one funding year overlaps the next. Also, as part of the streamlining and simplification of the application process, the FCC or USAC should not require applicants to formerly request approval on equipment substitutions that have already been approved by the SLD for the manufacturer. This duplicative request to substitute equipment is time consuming and unnecessarily disrupts the implementation of the project.

If the FCC wishes to further streamline the application and ensure that all eligibility rules are being followed, they can assume the full responsibility of

implementing a nationwide procurement process and develop an approved list of contracts by state/regions for Priority 2 providers and/or a list of approved original equipment manufacturers. This will further reduce the administrative burden on the applicants and also would alleviate waste, fraud, and abuse concerns.

As it is, the Form 470 and those regulations and practices related to that form should be eliminated or drastically changed. The E-Rate program has failed to fully recognize the fact that as a government entity, school districts are already bound by public procurement laws and rules designed to insure favorable pricing, encourage competition, and prevent fraud. While the original intent may have been to create competition, reduce costs, and create more possibilities for applicants, none of this has materialized for large school districts. The current Form 470 process has no value-added to the program and does not take into consideration that each municipality has its own local public procurement requirements and timelines from initial solicitation to actual execution of any agreements or contracts. In addition, the E-rate program stipulated that local procurement rules superseded the E-rate requirements but at the same time requires the applicant to go through the Form 470 process, which actually hinders the applicants' ability to fully comply with either or both sets of requirements. The use of a fully executed agreement or contract that is generally approved by either a City or State procurement authorities (e.g. in the case of NY, a fully executed contract would require the approval of either the City or State Comptroller) should be sufficient in lieu of filing a Form 470. The fact that an applicant is required to file a Form 470 even though a valid agreement or contract exists for a particular service/good creates an illusion that a public/government entity will be able to enter into another agreement or contract in accordance to its local procurement requirements within the timeline of the current application process. This is not realistic.

Some of the recent guidance from the SLD regarding this issue has been confusing and does not take into account regional cost differences or the need to retain many vendors from year-to-year as a more efficient and cost effective way to do business. What the Form 470 process has become is a ritual that creates obstacles and considerably

more works for schools while interfering with the normal procurement policy of the local governing body. Form 470 brings no advantage to the applicants and only creates another hurdle to jump in the complicated process of applying for E-rate discounts. We recommend the elimination of the 470 process and suggest that applicants are given an opportunity to use an alternative process that recognizes local procurement requirements and allows for the utilization of an existing state or Federal contracts.

Basic Maintenance: Specificity and Priority Shift

As the E-rate Program matures we believe that funding priorities, in some instances, must change. Basic Maintenance, which is a recurring service, now belongs in the Priority 1 services category of requests. Just as telecommunication and Internet services are mission critical, basic maintenance of the network must become the third element of the Priority 1 category of the program. As with other Priority 1 services, this category of funding commitment should also be approved on a multi-year basis. As complex telecommunication technology gets embedded into school settings, it is even more critical for the schools to institutionalize their maintenance and support mechanism.

If schools cannot adequately maintain their networks and ensure operations, the other priority one services is meaningless. At this point in time, with most classrooms connected to the Internet, the focus must logically shift to maintaining what schools already have in place and ensure that the investment is being sustained over time. To do otherwise would be irresponsible considering the amount of funding invested in the school's telecommunication infrastructure.

To date, the rules and guidelines covering Basic Maintenance are ambiguous. As we have stated in earlier comments to the FCC, maintenance should include preventive, diagnostic, life cycle replacements, and updating/enhancing functionalities. These areas of technology maintenance are in line with sustaining the operation of the

network. In addition, the need and cost effectiveness to maintain a network in a large school district may differ substantially from a small school district. The current eligibility rules on Basic Maintenance lack specificities and flexibilities, which hinder a large school district's ability to cost effectively, maintain its network. Firstly, per the current rules, all Basic Maintenance must be applied for on an annual basis and as such, it does not take into consideration that a school district, especially a large district will have the ability to level its volume needs over a multi-year period at a much better rate. It denies the school district an opportunity to negotiate for a much better maintenance cost over a multi-year period. This issue would be addressed if the FCC would shift Basic Maintenance to a separate category within Priority 1 and allow for a multi-year approval. Secondly, the need and level of execution of Basic Maintenance for a large school district is not the same as a small school district or that of one school. We would strongly support that the FCC considers providing more specificity relating to Basic Maintenance in terms of different delivery models, which could be more cost effective and efficient within a large school district such as the establishment of a central core support team of technicians with a fixed annual cost.

We recognize the moving of Basic Maintenance to Priority 1 services will reduce the amount of funding to Priority 2 services. However, there will continue to be a need for Priority 2 funding, especially for addressing equipment obsolescence, technology evolution, and the opening of new school facilities. (Please see above comments on Priority 2 application process.)

Audits

While we understand and approve the use of audits as a means to protect against program waste, fraud and abuse, we have concerns regarding their implementation. While audits can be an effective mechanism for oversight of the E-rate program, performing audits only on applicants provides neither a balanced assessment of the program nor the applicant being audited.

The E-rate program has two primary stakeholders in the implementation of the technology -- the applicant and the service provider(s). To date, only applicants have been audited without any corresponding audit on the service provider(s), who generally are allowed to submit documents/invoices to the SLD without any required sign-off or review of the applicant. Audits would be more revealing, balanced and fair if they were conducted with clearly established objectives and guidelines on all participants. This would ensure a more accurate finding of any program violation or discrepancy.

In our experience, the E-rate audits have been costly in personnel time and other resources. An efficient audit process relies on auditors who are adequately informed about the E-Rate program and public sector operations, especially public sector budgeting, transactions, contracting, and procurement. We have participated in several E-rate audits where the auditors spend a considerable amount of time learning the history, rules, and complexities of E-rate program from our staff, thus exhausting a great deal of our resources. There are instances where the auditor was not aware that E-rate is a discount program and not a grant program. Nor was the auditor familiar with the mechanisms of the program.

Another observation of many auditors is their unfamiliarity with the early years of the program or the fact that the E-rate program began six months prior to any regulations being fully established. The auditors assume the existence of clear and specific rules when none existed and tend to apply today's rules to prior years' environment. As a result, current, more codified rules are applied ex post facto.

Outside of waste, fraud, and abuse cases, most applicants are simply doing their best to comply with the program rules and regulations that at many instances require subjective interpretation. It would be a vast improvement of the auditing process if E-rate rules are made clearer and auditors are provided with defined guidelines specific to the E-rate program. We strongly recommend that future audits be more efficient in time, include all participants in the program, and provide focused guidelines for the auditors.

